

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LAW ENFORCEMENT OFFICERS SECURITY
UNIONS a/f THE LAW ENFORCEMENT
OFFICERS SECURITY AND POLICE
(Paragon Systems, Inc.)

and

Case No. 09-CB-268971

PETER KREITLER,
An Individual

Julius U. Emetu, Esq., for the General Counsel.
Jonathan G. Axelrod, Esq (Beins, Axelrod & Keating, P.C., Washington, D.C.)
for the Respondent.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried via Zoom video technology on May 27, 2021.. Peter Kreitler filed the charge giving rise to this case on November 10, 2020. The General Counsel issued the complaint on March 19, 2021.

The General Counsel alleges that Respondent Union violated Section 8(b)(1)(A) in failing to accept and process a grievance concerning Peter Kreitler's suspension and subsequent discharge and willfully failing to communicate with him regarding a grievance.

On the entire record, including my observation of the demeanor of the witnesses,¹ and after considering the briefs filed by the General Counsel and Respondent Union, I make the following

¹ While I have considered witness demeanor, I have not relied upon it in making any credibility determinations. Instead, I have credited conflicting testimony based upon the weight of the evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. *Panelrama Centers*, 296 NLRB 711, fn. 1 (1989).

FINDINGS OF FACT

I. JURISDICTION

5 The Respondent Union represents employees of Paragon Systems, Inc., which has headquarters offices in Herndon, Virginia. Paragon provides guard and security services to the Immigration and Customs Enforcement Office (ICE) in Louisville, Kentucky. Peter Kreitler was employed by Paragon at the ICE office in Louisville. In the 12 months prior to March 1, 10 2021, Paragon provided services in excess of \$50,000 directly to facilities located outside the State of Virginia.

II. ALLEGED UNFAIR LABOR PRACTICES

15 Peter Kreitler worked for Paragon Systems for 10 ½ years. The last 4 years of his employment were at the Louisville office of the Immigration and Customs Enforcement Agency (ICE). On October 8, 2020, Paragon suspended Kreitler pending an investigation of his conduct. At that time he was a member of the Union, the Law Enforcement Security Unions. Kreitler contends that after his suspension he repeatedly tried to contact the Union without success and 20 that the Union did not respond to his attempts to contact it. Steve Angel Maritas, the Executive Director of the Union, testified that he spoke with Kreitler many times. Maritas' telephone records show many calls between the Union and Kreitler: Kreitler testified that most of the calls amounted only to his leaving a voice message.

25 Maritas testified that he explained to Kreitler that the Union could not do anything for him until his employer made a final decision in its investigation. Maritas testified further that he told Kreitler that he needed the employer's final determination documents and that Kreitler never provided them to the Union. Paragon terminated Kreitler on October 20, 2020. Maritas testified that Kreitler never asked the Union to file a grievance on his behalf. Further, he testified that, 30 not only did Kreitler not request that the Union file a grievance, it could not have helped him because Paragon fired Kreitler pursuant to a demand from the contracting agency, the Federal Protective Service.

35 The parties do not dispute that Kreitler texted Maritas on October 8 and that Kreitler received an automated message that Maritas could not talk to him at that moment.

 Kreitler emailed Maritas on October 8 at 5:12 p.m. At 6:54 p.m. Maritas called Kreitler, R. Exh. 4 page A5. They spoke for 4 minutes.

40 Kreitler emailed Maritas again at 12:59 a.m. on October 9, stating that he was attaching a statement he had drafted for his defense. Maritas testified that the email did not contain an attachment. The General Counsel has not established that the statement was attached to this email.

45 Kreitler emailed Maritas again on October 9 at 8:30 a.m., informing him that he had an interview with the Paragon program manager that morning.

Maritas' telephone records indicate that Kreitler called him at 3:42 p.m. on October 9 and that they were connected for 3 minutes.

5 Kreitler testified that he called Maritas several times between October 9 and October 14 without getting any response. . Maritas' phone records do not so indicate. Thus, I do not credit this testimony. At 6:54 p.m. on October 14, Kreitler sent a text message to Maritas, stating, "Never mind sir, I'll get another agency to do this. We'll be in touch.," G.C. Exh. 2.

10 Maritas' telephone records indicate that he called Kreitler at 6:56 p.m. and then again at 7:12 on October 14. I have no reason to doubt the authenticity or accuracy of these records. The first call lasted 3 minutes; the second 4 minutes.

15 Kreitler testified that Maritas told him that he had been in contact with Les Kaciban, Paragon's Director of Contracts, about Kreitler's situation. Kreitler testified that he told Maritas that the Union should file a grievance. Maritas denies this and says he explained to Kreitler that until Paragon made a decision at the end of its investigation, the Union could not file a grievance.

20 Maritas also testified that under the collective bargaining agreement, the Union had 15 days in which to file a grievance from the date of the adverse action. He also testified that he told Kreitler that if FPS excluded Kreitler from the ICE property, there was nothing the Union could do about it. I credit this testimony.

25 At 7:57 p.m. on October 14, after Kreitler had spoken to Maritas, Kreitler informed Maritas by text that he had been off of work for 4 days.

30 Maritas' phone records indicate that Kreitler called him at 3:28 p.m. on October 16, 2020 and that they were connected for 5 minutes. Kreitler testified that on this occasion he left Maritas a voice mail and did not talk to him. Maritas testified that they did speak and that he told Kreitler he needed Paragon's final determination document before deciding how the Union would proceed. I credit Maritas. Kreitler confirmed that Maritas told him at some point that the Union could not do anything until the investigation had been completed when the Union knew the reasons for the Employer's decision., Tr. 175.

35 On October 20, Maritas and Kreitler were connected for 5 minutes at 9:45 a.m. Kreitler concedes he spoke with Maritas on October 20, Tr. 55. He testified that Maritas told him he was working on filing a grievance.

40 Kreitler testified that he sent the Union 2 text messages on October 20 and another on October 21, which Maritas testified were never received. I credit Maritas. His testimony that texts in blue were received and texts in green were not, is credible. One of these text messages included Kreitler's email address. The texts in green were sent to a phone number ending in 3510 that did not accept text messages. However, a phone call to that number automatically transfers to Maritas' cell. Also, Kreitler had another phone number for Maritas and his email address.

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According to Maritas' phone records, he and Kreitler were connected for 9 minutes by telephone on October 22, starting at 1:38 p.m. The records indicate that Kreitler initiated the call. Kreitler testified that he does not recall talking to Maritas that day; I conclude that he did so.

On October 23, 2020, Kreitler received a certified letter from Paragon dated October 20, informing him that he was terminated for neglect of duty. He made no attempt to contact the Union after receiving this termination letter until December 9, when he declined to respond to a telephone call from Maritas. Kreitler filed the charge in this case on November 10, 2020.

I generally find Maritas a more credible witness than Kreitler. Maritas' phone records are more consistent with his testimony than Kreitler's and there does not appear to be any question as to their authenticity. I conclude that Maritas asked Kreitler for whatever final decision he received from Paragon and that Kreitler never sent the Union his termination letter. I also find that Kreitler never asked Maritas to file a grievance on his behalf and certainly did not do so after receiving the termination letter.

The applicable legal standard

Section 8(b)(1)(A) of the Act provides that it shall be an unfair labor practice for a labor organization "to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7 of the Act." Section 8(b)(1)(A) creates a duty, when a union is acting as an exclusive bargaining representative, to fairly represent all employees in the bargaining unit and to refrain from any action against an employee based upon considerations or classifications that are arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967); see also *Operating Engineers Local 181 (Maxim Crane Works)*, 365 NLRB No. 6 (2017).

The Supreme Court has long held that a union is afforded wide latitude in carrying out its representational duties. See *United Steelworkers of America, AFL-CIO-CLC v. Rawson*, 495 U.S. 362, 374 (1990), citing *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953); *Vaca v. Sipes*, above at 191; see also *Operating Engineers Local 181*, above. As the Court stated in *Airline Pilots Assn. v. O'Neill*, 499 U.S. 65, 78 (1991), regarding a union's negotiated strike settlement, an examination of a union's performance "must be highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining responsibilities." To be found arbitrary, the union's behavior must have been "so far outside a 'wide range of reasonableness' that it is wholly 'irrational' or 'arbitrary.'" *Airline Pilots Assn.*, above at 66, citing *Ford Motor Co.*, above at 338.

Thus, a union enjoys a wide range of discretion in determining whether and how to handle employee grievances, provided the exercise of such discretion is not based on discriminatory, arbitrary, or bad-faith considerations. *Office Employees Local 2*, 268 NLRB 1353, 1355 (1984), affd. sub nom. *Eichelberger v. NLRB*, 765 F.2d 851 (9th Cir. 1985), citing *Teamsters Local 692 (Great Western)*, 209 NLRB 446 (1974); see also *Turner v. Air Transport Dispatchers' Assn.*, 468 F.2d 297, 299 (5th Cir. 1972).

Something more than mere negligence, poor judgment or ineptitude in grievance handling is needed to establish a breach of a union's duty of fair representation, *American Transit Union, Local 1498*, 360 NLRB 777 (2014). In this case, even if I were to credit Peter

Kreitler, the record would establish nothing more than negligence, poor judgment or ineptitude on the part of the Union and Executive Director Steven Maritas.

5 I reach this conclusion because there is no evidence of animus towards Kreitler on the part of Maritas or any other union official. I also rely on the fact that Kreitler never sent the Union his termination notice-after being told by Maritas that the Union could not do anything before receiving it.

10 At worst, the Union and Maritas are guilty of “dropping the ball.” Thus, I find no basis for finding that the Union violated 8(b)(1)(A) even if I viewed the facts in a manner most favorably to Kreitler. Therefore, I dismiss the complaint.

15 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The complaint is dismissed.

20 Dated, Washington, D.C.
July 9, 2021



Arthur J. Amchan
Administrative Law Judge

² If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.